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21 IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE G. PATRI BASAVANA GOUD

WRIT PETITION NUMBER 13595 OF 1995

Between:

M/s Panyam Cements and
Minerals Industries Limited
Wire Division
Madivala Post
Bommanahalli
Bangalore 560 008
by its President -Petitioner

(By Sri B. C. Prabhakar, Advocate)

And:

1. Deccan Wire Employees'
Association
Madivala Post
Bommanahalli
Bangalore 560 008
by its General Secretary

2. Industrial Tribunal
I Cross, Gandhinagar
Bangalore 560 009 -Respondents

(By Sri T. Narayanaswamy, Adv. for R-1;
Sri B. E. Kotian, HCGP for R-2)

This writ petition is filed under Articles 226 and 227 of the Constitution seeking to quash the award dated 16-8-1994 passed by the second respondent in ID No.35 of 1982 in so far as it relates to the justification of the strike indulged in by the workmen from 12-8-1982 to 31-8-1982 and their entitlement for wages for the said period at Annexure-A.

This writ petition coming on for hearing and having been reserved for orders, the Court this day, made the following:

ORDER

O R D E R

Petitioner employer, in this writ petition under Articles 226 and 227 of the Constitution, seeks quashing of the award of the second respondent - Industrial Tribunal dated 16-8-1994 at Annexure-A, in so far as it holds strike by the members of the first respondent Employees' Association - workmen of the petitioner establishment - from 12-8-1982 to 31-8-1982, as justified, and in so far as it holds the workmen entitled to wages for the said period.

2. The erstwhile Deccan Wires Limited (Wire Division) had been manufacturing sophesticated high carbon steel wires, going into production in the year 1976. It suffered loss, and it was amalgamated with the petitioner M/s Panyam Cements and minerals Industries Limited with effect from 31-5-1980. After amalgation, the erstwhile Deccan Wires at Bangalore is referred to as the the Wire Division. M/s Panyam Cements had units at Karnool and Bellary Districts also. While the management paid bonus at 20 % in 1979-80 and 16% in 1980-81 to the workmen of the said other units, the said bonus was not paid to the workmen of the Wire Division at Bangalore. In this regard, a

dispute was raised by the workmen of the Wire Division. Management contended that, as per Section 16 of the Payment of Bonus Act, 1965, the Wire Division having gone into production since 1976, bonus was payable only from the 6th accounting year - in the following accounting year in which the establishment sold the goods produced, and, as such, Wire Division had a bonus holiday for the period of 5 years, and, that the management of the Wire Division was not liable to pay bonus to the workmen for the year 1979-80 or 1980-81. It contended that the Wire Division had been sustaining huge losses, and that, as on December 1979, the accumulated losses totalled over Rs.6 crores. Even then, management offered bonus at 8.33 % for the year 1980-81. Workmen of the Wire Division, however, contended that, just as workmen of other units were being paid, they were also entitled to 20% of bonus for the accounting year 1979-80 and 16% bonus for the accounting year 1980-81. In the face of these rival contentions, the matter was admitted to conciliation. Conciliation meetings were held on 20-7-1982, 28-7-1982 and 2-8-1982. The workmen had, however,

~~had~~ told the management that if the management did not concede to the said demand for bonus, they would go on strike. ~~Government~~ workmen accordingly went on strike from 12-8-1981 to 31-8-1981. It was then that the State Government referred the dispute under Section 10(1)(d) of the Industrial Disputes Act, 1947 ('Act' for short) to the Industrial Tribunal, Bangalore. The first point of reference was - whether the workmen of the Wire Division were entitled to 20 per cent bonus for the accounting year 1979-80 and 16 per cent bonus for the accounting year 1980-81. The second point of reference was - whether the workmen were justified in going on strike from 12-8-1982 to 31-8-1982. By the impugned award, the Industrial Tribunal answered the first point in the negative, thereby holding that the workmen were not entitled to the bonus asked for. The Tribunal, however, held the strike as justified, and directed payment of wages for the said period. It is this part of the award with regard to justification of the strike and payment of wages during the strike period, that is called in question in this writ petition.

3. To conclude that the strike was justified, the Industrial Tribunal has observed that the management also contributed in bringing on record a particular annual report. The said annual report at Exhibit W-2 relates to the period after amalgamation. As the Tribunal itself notices in the course of the award, the said report also showed what was the loss from the Wire Division. The Tribunal also observed that, when the balance sheet specifically pointed out xxxx the losses suffered from the Wire Division, it cannot be said that the workmen of the Wire Division contributed for the progress of the concern so as to claim bonus beyond 8.33 per cent on the basis of the profirts earned by the workers of the other branches of the establishment. The Wire Division had been treated as a separate unit for the purpose of Section 16 of the Payment of Bonus Act also. In these circumstances, there was no scope for the workmen of the Wire Division to get confused with regard to their claim for bonus. Production of a particular annual report, therefore, could not be held against the management when it clearly showdd what was the loss suffered in the Wire Division also.

4. The fact that however remains is that the workmen did go on strike from 12-8-1982 to 31-8-1982. It is conceded that the strike was not illegal. Section 22 of the Act did not apply. Though the conciliation proceedings was pending, it was not before the Board, and, as such, there was no violation of Section 23(a) of the Act also. It is in these circumstances that the management concedes that the strike was not illegal. But the question is whether it was justified as held by the Tribunal.

5. Ms. Swetha Anand, learned counsel for the first respondent Employees' Association, strenuously urges that the recalcitrant attitude on the part of the management led the employees to take recourse to strike. Ms. Swetha Anand submits that when their counter parts in other units were being given bonus at 20 per cent for one year and 16 per cent for another year, the workmen of the Wire Division were rightly agitating on account of the attitude of the management in not paying bonus and not offering bonus beyond 8.33 per cent for one year. Ms. Swetha Anand submits that the workmen of the Wire Division bona fide believed

that the Wire Division was in no way different from the other establishments, management also having contributed to this confusion by preparing the balance sheet. Ms. Swetha Anand, therefore, urges that even though the Tribunal now held that the workmen of the Wire Division were not entitled to the bonus claimed, such conclusion has been reached after consideration of the evidence on record, that, at the time the workmen went on strike, all the circumstances point to the workmen being justified in asking for the said bonus, and, as such, their going on strike could not be called unjustified. Sri B. C. Prabhakar, learned counsel for the management urges that - firstly there was no scope for any such confusion on the part of the workmen of the Wire Division since the balance sheet clearly showed what loss had been sustained in the Wire Division and also, since it was clearly understood for the purpose of Payment of Bonus Act that it had been treated as a separate unit enjoying the bonus holiday for the first five years, and, as such, the workmen were not justified in asking for bonus. Sri B. C. Prabhakar urges that even if the workmen believed that they were entitled to the

bonus they were demanding, conciliation proceedings were already on and the matter was not so urgent as to necessitate going on strike.

5. The fact that the Wire Division had been consistently sustained loss, could not have escaped the notice of the workmen of the Wire Division. Preparation of the balance sheet in respect of all branches of the petitioner could not have misled the workmen of the Wire Division for the simple reason that it also showed the loss sustained in the Wire Division. Even then, the workmen were within their rights in demanding bonus. Whether or not they were entitled to the said bonus was a different matter. Having demanded bonus and raised a dispute in that regard, the dispute was rightly admitted to conciliation. Without waiting for the conciliation officer to submit his failure report, and without waiting for the dispute being referred by the State Government for adjudication to an appropriate Labour Court, the question whether the workmen of the Wire Division were justified in resorting to the strike, I am of the opinion that the issue of bonus was not of such urgency as not to wait

the normal adjudicatory process, particularly when the matter had been admitted to conciliation. There was, therefore, no justification for the workmen to go on strike. It would be useful to refer to certain observations of the Supreme Court in two cases on this aspect. In CHANDRAMALAI ESTATE, ERNAKULAM v. ITS WORKMEN, 1960(2) LLJ 243, the Supreme Court was dealing with the wages for the period of strike when the workmen had gone on strike on the aspect of realisation of excess price by the management for rice sold to the workmen after de-control, and demand for cumbly allowance. On both these aspects, the demand of the workmen was held to be justified. But, on the aspect of justification of the strike, while the workmen pleaded that the strike was justified, management contended to the contrary. The Industrial Tribunal had held that both the parties were to be blamed for the strike, and, therefore, directed the management to pay the workmen 50 per cent of wages during the strike period. Eventually, the matter reached the Supreme Court. This is what the Supreme Court said on this aspect.

" This brings us to the question whether the tribunal was right in awarding 50 per cent of emoluments to the workmen for the strike period. It is clear that on 30 November 1955, the union knew that conciliation attempts had failed. The next step would be a report by the conciliation officer, of such failure to the Government, and it would have been proper and reasonable for the union to address the Government at the same time and request that a reference should be made to the industrial tribunal. The union, however, did not choose to wait and after giving notice on 1 December 1955 to the management that it had decided to strike from 9 December 1955, actually started the strike from that day. It has been urged on behalf of the appellant that there was nothing in the nature of the demands to justify such hasty action and in fairness, the union should have taken the normal and reasonable course provided by law by asking the Government to make a reference under the Industrial Disputes Act before it decided

to strike. The main demands of the union were about the cumbly allowance and the price of rice. As regards the cumbly allowance, they had said nothing since 1949 when it was first stopped, till the union raised it on 9 August 1955. The grievance for collection of excess price of rice was more recent, but even so, it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all, it is not the employer only who suffers if production is stopped by strikes. While on the one hand, it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that, for any kind of demand, a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their

objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made, may well be justified. The present is not, however, one of such cases. In our opinion, the workmen might well have waited for some time after conciliation efforts failed before starting a strike, and, in the meantime, to have asked the Government to make the reference. They did not wait at all. The conciliation efforts failed on 30 Novemuer 1955, and, on the very next day, the union made its decision on strike and sent the notice of the intended strike from 9 December 1955, and on 9 December 1955, the workmen actually struck work. The Government appears to have acted quickly and referred the dispute on 3 January 1956. It was after this that the strike was called off. We are unable to see how the strike

in such circumstances could be held to be justified.

The tribunal itself appears to have been in two minds on the question. Its conclusion appears to be that the strike, though not fully justified, was half justified and half unjustified; we find it difficult to appreciate this curious concept of half justification. In any case, the circumstances of the present case do not support the conclusion that the strike was justified at all. We are bound to hold, in view of the circumstances mentioned above, that the tribunal erred in holding that the strike was at least partially justified. The error is so serious that we are bound in the interests of justice to set aside the decision. There is, in our view, no escape from the conclusion that the strike was unjustified, and so, the workmen are not entitled to any wages for the strike period."

Then, in SYNDICATE BANK AND ANOTHER v. K. UMESH NAYAK, 1994 (2) LLJ 836, the Supreme Court observed thus:

"9. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort, being an abnormal aspect of the employer-employee relationship, and involves withdrawal of labour, disrupting production, services and the running of the enterprise. It is a use by the labour of their economic power to bring the employer to see and meet their view-point over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work over-time when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. etc. The cessation or stoppage of work, whether by the employees or by the employer, is detrimental to the production and economy and to the well being of the

society as a whole. It is for this reason that the industrial legislation, while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lock-out, and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times provide for a suitable machinery for resolution of the disputes. When the law, or the contract of employment, or the service rules, provide for a machinery to resolve the dispute, resort to strike or lock-out as a direct action is prima facie unjustified. This is particularly so when the provisions of the law or of the contract or of the service rules in that behalf, are breached. For then, the action is also illegal.

The question whether a strike or lock-out is legal or illegal does not present much difficulty for resolution since all

that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, the action is justified or unjustified has to be examined by taking into consideration various factors, some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lock-out is not to be ~~restored~~ resorted to because the concerned party has a superior bargaining power, or the requisite economic muscle, to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the

dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lock-outs in public utility services.

With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organised labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and

thereby compelling the management to give in on their demands, whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in these undertakings, there are millions who are either unemployed, under-employed or employed on less than statutorily minimum remuneration. The employment that workmen get, and the profits that the employers earn, are both generated by the utilisation of the resources of the society in one form or the other, whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the well being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as

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the trustees of the said recources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lock-outs. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector."

6. In the light of the principles enunciated by the Supreme Court in the above said decisions, it could be seen that the demand for bonus as raised by the workmen of the Wire Division was not of such an urgent and serious nature as to justify the workmen to resort to strike. The

matter had been admitted to conciliation. Ms.Swetha Anand submits that the workmen had withdrawn from conciliation. Even then, it would not justify the workmen going on strike. There was no reason for the workmen to withdraw from conciliation, nor was there any reason for them not to wait till conciliation officer submitted his failure report and till the State Government referred the dispute for adjudication to the Industrial Tribunal. Their going on strike, therefore, was totally unjustified, and the Tribunal erred in concluding to the contrary. In the above said decision of the Supreme Court in SYNDICATE BANK AND ANOTHER v. K. UMESH NAYAK, ETC (supra), the Supreme Court referred to its observations in an earlier case thus:

> "Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognises the right to strike as a legitimate weapon in the hands of the workmen. However,

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this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strikes invite deduction of wages on the principle that "whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done." In other words, the Court upheld the dictum 'no work, no pay'."

7. The strike being totally unjustified, the Tribunal erred in holding the strike as justified and directing payment of wages for the said period. Writ Petition is, therefore, allowed and that part of the impugned award is quashed.

Sd/-
JUDGE

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